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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, *et al.*, individually and
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
GOOGLE'S REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Judge: Hon. Yvonne Gonzalez Rogers

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of Google LLC’s Reply in Support of Motion for Summary Judgment (“Reply”), which contains non-public, highly sensitive, and confidential business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed, including details related to Google’s internal projects, internal databases, and logs, and their proprietary functionalities, as well as internal metrics, which Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Reply:

Document	Portions to be Filed Under Seal	Basis for Sealing
Google’s Responsive Separate Statement to Plaintiffs’ Additional Material Facts	Highlighted Portions at: Pages 9:23, 10:12, 11:11, 12:13-14, 16:10-11, 19:3, 21:23, 23:9, 24:9, 25:23, 33:17-18, 43:26, 44:12	The information requested to be sealed contains Google’s highly confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations, including various types of Google’s internal projects, data fields, and logs, as well as internal metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. Such confidential and proprietary information reveals Google’s internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. See Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google’s competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google’s internal practices relating to competing products.
Exhibit 146 11/30/22 Psounis Declaration	Highlighted Portions at: Pages 1, 3-13	The information requested to be sealed contains Google’s highly confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations,

		including various types of Google's internal projects, data sources, and logs, source code, and their proprietary functionalities, as well as internal metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. See Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Exhibit 147 2/10/23 Psounis Declaration	Highlighted Portions at: Pages i:16-17, i:23, i:28, ii:2-3, 2:18-19, 3:25-27, 4:4, 4:10, 4:12-13, 10:13-14, 10:19, 10:22, 11:6, 13:7-8, 16:4-5, 16:10, 16:12, 16:25, 23:2, 23:8-9, 23:13, 23:15- 16, 23:22, 23:27, 24:8, 24:11, 24:19, 24:24, 24:28, 25:1, 25:5-7, 25:13, 25:21- 24, 26:1, 26:7, 26:9, 26:21-24, 27:6	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types of Google's internal projects, data sources, and logs, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. See Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.

<p>Exhibit 148 2/14/23 Berntson Dep. Tr. Excerpts</p>	<p>Highlighted Portions at: Page 116:18-25</p>	<p>The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types of Google's internal projects, and their proprietary functionalities, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. See Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.</p>
<p>Exhibit 149 4/29/21 Discovery Hearing Tr. Excerpts</p>	<p>Highlighted Portions at: Pages 26:9, 26:18-19</p>	<p>The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types of Google's internal projects, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. See Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's</p>

1		internal practices relating to competing products.
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3	Exhibit 151 11/24/21 Mardini Dep. Tr. Excerpts	Highlighted Portions at: Pages 286:11, 286:15, 287:16, 289:21-22, 290:12- 16, 457:21
4		The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types of Google's internal projects, and their proprietary functionalities, as well as internal metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. See Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
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17	Exhibit 156 5/27/22 Expert Report of Bruce A. Strombom	Highlighted Portions at: Pages i, ii, 1, 3-6, 16- 17, 19, 21, 27, 31-37, 39, 41, 44-48, 51-56, 60, 62, 64-76, 78, 80- 82, 84-90, 94-96, 98- 102, 104-112, Exhibit 2:1-4, Exhibit 5-10.C: all pages Appendix B - Page 1
18		The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types of Google's internal projects, and their proprietary functionalities, as well as internal metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. See Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google's competitive standing as competitors may alter their systems and practices relating to
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		competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
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II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). Quoting the Supreme Court’s decision in *Nixon v. Warner Communications*, the Ninth Circuit has noted that examples of what might constitute a compelling reason include “‘sources of business information that might harm a litigant’s competitive standing.’” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (quoting 435 U.S. 589, 598-99 (1978)). The materials that Google seeks to seal here easily meet the “compelling reasons” standard.

III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED

Courts have repeatedly found it appropriate to seal documents that contain “business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Materials that could harm a litigant’s competitive standing may be sealed under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’ standard where that information could be used to the company’s competitive disadvantage”) (citation omitted). Courts in this district have also determined that motions to seal may be granted as to potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015

1 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party]
2 ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

3 Here, the compelling reason standard is satisfied. The Reply comprises confidential and
4 proprietary information regarding highly sensitive features of Google’s internal systems and
5 operations that Google does not share publicly. Specifically, this information provides details
6 related to Google’s internal projects, internal databases, and logs, and their proprietary
7 functionalities, as well as internal metrics. Such information reveals Google’s internal strategies,
8 system designs, and business practices for operating and maintaining many of its important services
9 while complying with its legal and privacy obligations.

10 Public disclosure of the above-listed information would harm Google’s competitive standing
11 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
12 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
13 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
14 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
15 sensitive business information related to Google’s processes and policies to ensure the integrity and
16 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
17 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
18 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
19 *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20,
20 2014) (sealing “highly sensitive information regarding Delphix’s product architecture and
21 development”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8,
22 2013) (granting motion to seal as to “internal research results that disclose statistical coding that is
23 not publicly available”).

24 Moreover, if publicly disclosed, malicious actors may use such information to seek to
25 compromise Google’s infrastructure. Google and its users would be placed at an increased risk of
26 cyber security threats, and data related to its users could similarly be at risk. *See, e.g., In re Google*
27 *Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
28 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”

1 because if made public, it “could lead to a breach in the security of the Gmail system. The security
2 threat is an additional reason for this Court to seal the identified information.

3 The information Google seeks to redact, including information related to Google’s internal
4 projects, internal databases, and logs, and their proprietary functionalities, as well as internal metrics
5 is the minimal amount of information needed to protect its internal systems and operations from
6 being exposed to not only its competitors but also to nefarious actors who may improperly seek
7 access to and disrupt these systems and operations. Google’s sealing request is warranted under
8 “compelling reasons” standard.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court should seal the identified portions of the Reply.

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12 DATED: April 26, 2023

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